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10 Counsel for Responding Attorney Jeremy L. Friedman

11 UNITED STATES DISTRICT COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA

14 LUNELL GAMBLE, and SHEILA
KENNEDY, on behalf of themselves as
15 well as a class of similarly situated
individuals,

16 Plaintiff

17 vs.

18 KAISER FOUNDATION HEALTH
19 PLAN, INC; KAISER FOUNDATION
HOSPITALS, INC.; and THE
20 PERMANENTE MEDICAL GROUP;
all doing business as KAISER
21 PERMANENTE MEDICAL CARE
PROGRAM

22 Defendants
23

Case No. 4:17-cv-06621-YGR

**DECLARATION OF COUNSEL IN
SUPPORT OF ADMINISTRATIVE
MOTION TO FILE UNDER SEAL A
CONFIDENTIAL DECLARATION IN
RESPONSE TO ORDER TO SHOW
CAUSE**

Hon. Yvonne Gonzalez Rogers

1 Jeremy L. Friedman declares and states:

2 1. I am attorney of record for named plaintiffs and the putative class in this case, and I
3 am responding attorney to the Court's August 30, 2019, Order to Show Cause.. I make this
4 declaration in support of the motion to file under seal a confidential declaration of plaintiff
5 Gamble concerning a prior mediation. It is based upon my own personal knowledge. If
6 called as a witness, I would and could testify competently to the following matters.

7 2. This Court previously granted leave to file under seal and exchange of
8 correspondence following a mediation of plaintiff Gamble's pre-removal claims. Those
9 exhibits were confidential, and not submitted on a dispositive motion. Following the denial
10 of the Rule 16 motion, the Court issued an order to show cause concerning the terms of the
11 retainer agreements with plaintiffs. Responding Attorney now seeks to file a declaration by
12 plaintiff addressing non-privileged matters related to the confidential mediation. As with the
13 correspondence, the declaration and exhibit should be filed under seal.

14 3. Attached hereto, and filed along with the administrative motion for leave to file
15 under seal, are true and accurate copies of the declaration and an exhibit to that declaration,
16 both of which are confidential.

17 4. As noted previously, matters concerning the mediation were intended to be
18 confidential, and might be subject to Evidence Code §§1115-1128, 1152, and Rule 408 of
19 the Federal Rules of Evidence. In the prior seal motion, I concluded that the California
20 mediation privilege at §1119 did not apply. Prior to the mediation, the Superior Court
21 granted leave to amend to plead a claim under federal law, 42 U.S.C. §1981. It was my
22 understanding that, if a settlement was reached at mediation, Kaiser would have demanded
23 Ms. Gamble release all federal and state law claims. Moreover, by the time of my letter to
24 the mediator, plaintiff Gamble had already amended to include her federal claim, as well as
25 class allegations. Finally, the declaration would not be inadmissible under Rule 408, as it is
26 not admitted to prove or disprove the validity or amount of a disputed claim. Despite these
27 legal conclusions, there is concern for confidentiality. Because of the possibility that the
28 Court may find a privilege, and/or to protect the expectations of the mediator and parties at

1 mediation, responding attorney and plaintiffs request that the Court grant leave to file the
2 declaration under seal on this non-dispositive motion.

3 I declare under penalty of perjury that the foregoing is true and correct. Executed this
4 16th day of June, 2019.

5 /s/Jeremy L. Friedman
6 Jeremy L. Friedman

7 **CERTIFICATE OF SERVICE**

8 I hereby certify that the foregoing was filed with the Clerk of the Court for the
9 Northern District of California, by using the CM/ECF system. I certify that all participants
10 in the case are registered CM/ECF users and that service will be accomplished by the
11 CM/ECF system.

12 I hereby also certify that I filed the declaration under temporary seal, and that I
13 served a PDF version of those exhibits upon defendants' counsel, at the email address listed
14 in the Court's CM/ECF system.

15 /s/ Jeremy L. Friedman
16 Jeremy L. Friedman
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